APPENDIX A — OPINION OF THE SUPREME COURT OF ALABAMA RELEASED NOVEMBER 9, 2001

OCTOBER TERM, 2001-2002

SUPREME COURT OF ALABAMA

1000093

Brenda O. Singer et al.,

v.

City of Alabaster et al.

Appeal from Shelby Circuit Court (CV-00-850)

BROWN, Justice.

Brenda O. Singer, Patsy H. Cannon, Gwen Dill, and John D. Harmon (collectively referred to herein as "the plaintiffs") appeal from the Shelby Circuit Court's dismissal of their lawsuit contesting the results of the August 22, 2000, municipal election for the position of Ward 1 council member for the City of Alabaster ("the City"). We affirm.

Facts and Procedural History

The City is governed by a mayor, who is elected by a citywide vote, and seven city council members, who are elected by voting districts or "wards." The City's population is predominantly white; according to the 1990 Federal

decennial census, only 1,617 of the City's 14,732 residents are African-American.

In 1991, the City adopted a redistricting plan for its seven wards to reflect annexations and natural population increases. On December 30, 1991, the City obtained "preclearance" from the United States Attorney General ("the Attorney General") for its redistricting plan, as well as for its mayor-council form of government and its recent annexations, as required by § 5 of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973c. Section 5 provides, in pertinent part, that covered jurisdictions (of which Alabama is one) may not enforce any change affecting voting without first receiving a preclearance determination from the Attorney General finding that the proposed change is not racially discriminatory in purpose or effect. Under the City's precleared redistricting plan, the population in one of the City's seven wards would be predominantly African-American, while the population in the remaining six wards would be overwhelmingly white. The City's precleared plan also provided that pursuant to §§ 11-46-20 and -21, Ala. Code 1975, nonpartisan municipal elections were to be held on the fourth Tuesday in August in those years in which there was a Presidential election.

Since the 1991 preclearance, the City has approved 58 new commercial and residential annexations. Two of those annexations were of areas in which the plaintiffs resided at the time of the August 22, 2000, municipal election. Those two annexations were within a broader area known as the Weatherly subdivision, an area where the population is predominantly white. After it annexed an area, the City

assigned the annexed area to a ward; the areas of the plaintiffs' annexations were both assigned to Ward 1, the only ward in which the population was predominantly African-American.

On May 31, 2000, the City sought preclearance from the Attorney General for its annexations and ward assignments made after the 1991 preclearance. On July 10, 2000, the Attorney General precleared all of the City's commercial annexations, but requested additional information as to population statistics, demographic shifts, and election data regarding the City's residential annexations. The City responded, but the Attorney General considered its answers to be incomplete. The Attorney General nevertheless recognized the need for an expedited decision because of the impending August 22, 2000, elections. Accordingly, the Attorney General issued an order preclearing all of the annexations, but not all of the ward assignments. Specifically, the order refused preclearance for the assignment of the plaintiffs' two annexed areas to Ward 1, stating that assigning those annexed areas to Ward 1 diluted the African-American vote in that ward and, thus, defeated the goal of the Voting Rights Act of 1965. The City immediately notified the Attorney General, in a letter dated August 17, 2000, that it would comply with the preclearance order by not counting the votes from these two annexed areas in the Ward 1 city-council race. The City also advised the Attorney General that it was unable to print new ballots for the two unprecleared annexed areas to Ward 1 before the upcoming election; however, it informed the Attorney General that it would accommodate the preclearance issue by having the voters in the two unprecleared annexed areas of the Weatherly subdivision vote at separate polling sites for the

Ward 1 city-council election, thereby segregating their votes from the rest of the precleared Ward 1 electorate so that their votes for the Ward 1 council member would not be counted.

The City held its municipal election on August 22, 2000, as planned. The Ward 1 city-council election involved a contest between Bobby Lee Harris, the incumbent, and Todd Goode, the challenger. In the precleared areas of Ward 1, Harris, an African-American, garnered 326 votes, while Goode, who is white, garnered 287 votes. A total of 103 ballots were cast in areas included in the two Weatherly subdivision annexations. All of the ballots included votes for mayor and all but two ballots included votes for Ward 1 city council. Pursuant to the City's promise to comply with the Attorney General's preclearance order, the City counted all the Weatherly subdivision votes for mayor but disallowed the votes in the two annexed areas for Ward 1 city council. The record suggests that all of the 101 votes cast in the Ward 1 city-council election by those residents in the Weatherly subdivision annexed areas were cast for Goode. Had those votes been counted, Goode would have won the race with 388 votes.

On August 28, 2000, the plaintiffs, who are among the 101 Weatherly subdivision voters whose ballots were not counted in the Ward 1 city-council election, sued the City, Steve Rauch (the mayor of the City of Alabaster), and Harris in the Shelby Circuit Court contesting the election result favoring Harris. The plaintiffs contended that disallowing their votes in the Ward 1 city-council election violated their federal and state constitutional rights to equal protection and their right to vote, guaranteed by § 2 of the Voting Rights

Act of 1965. The plaintiffs asked the circuit court to nullify the results of the election, or, alternatively, to order that the Weatherly subdivision votes from the two annexed areas be counted in the Ward 1 city-council election.

The defendants filed motions to dismiss, arguing that state courts lacked subject-matter jurisdiction over the case under § 5 of the Voting Rights Act of 1965. The circuit court agreed, holding that it could not fashion a remedy without "disregarding . . . clearly established federal law." The circuit court subsequently dismissed the case, and the plaintiffs appealed.

Discussion

The question presented in this appeal is whether the circuit court erred in dismissing the plaintiffs' action for lack of jurisdiction.

Under our federal system, state courts and federal courts are presumed to have concurrent jurisdiction over cases arising under federal law. Congress, however, may confer upon federal courts exclusive jurisdiction by means of an exclusive statutory directive. *See Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981). Congress has pronounced that only federal courts can entertain "[a]ny action under this section [§ 5 of the Voting Rights Act]." 42 U.S.C. § 1973c. Accordingly, this Court, observing its constitutional duty to recognize the supremacy of federal law, has held that "cases involving the interpretation of the preclearance requirements of Section 5 of the federal Voting Rights Act are within the exclusive jurisdiction of the federal

courts." *Mitchell v. City of Prichard*, 538 So.2d 1, 2 (Ala. 1988). The dispositive question in the present case is whether the plaintiffs' action "arises under" § 5, thereby divesting state courts of jurisdiction.

The plaintiffs maintain that their action is an election contest, at the heart of which is a claim that they were unconstitutionally denied the right to vote in the August 22, 2000, Ward 1 election.[1] They argue that any nexus their claim may have with § 5 of the Voting Rights Act is merely incidental and, thus, does not prevent the Shelby Circuit Court from exercising jurisdiction. In so arguing, the plaintiffs assert that their cause of action accrues under state election laws rather than under § 5 of the Voting Rights Act.

The actual source of the plaintiffs' right to bring an action, however, is not necessarily determinative of the question whether their lawsuit "arises under" § 5. It is true that "[o]rdinarily, '[a] suit arises under the law that creates the cause of action.' " *Hudson Ins. Co. v. American Elec. Corp.*, 957 F.2d 826, 828 (11th Cir. 1992) (quoting *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260, (1916)). There are many instances, however, where claims brought under the color of state law nevertheless raise federal questions, thereby conferring upon federal courts subject-matter jurisdiction. As to these situations, the United States Supreme Court has said that federal subject-matter

1. In their complaint contesting the August 22, 2000, election, the plaintiffs claim that the City deprived them of their constitutional right to vote when it proceeded with the August 22, 2000, election before it obtained preclearance for the inclusion in Ward 1 of the areas annexed into the Weatherly subdivision.

jurisdiction exists where the plaintiff's right to relief "depends on resolution of a substantial question of federal law." *Franchise Tax Bd. of the State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 28 (1983). We believe that federal-question jurisprudence extends to the present case, where state jurisdiction can exist only if a full adjudication of the plaintiffs' lawsuit is possible without consulting § 5.

The plaintiffs, in filing this election contest, have sought to nullify the results of the Ward 1 city-council election so that one of two remedies requested in their complaint can be ordered. Accordingly, in addition to nullification, the plaintiffs have asked the Shelby Circuit Court either (1) to conduct a recount of all votes cast in the Ward 1 election, including those votes from the annexed areas of the Weatherly subdivision that were originally excluded, or (2) to delay a second Ward 1 election indefinitely, pending the assignment of the allegedly disenfranchised Weatherly subdivision voters to a ward that has been precleared.

As to the first remedy the plaintiffs requested, the United States Supreme Court has clearly foreclosed the option of counting votes from unprecleared areas. In *Clark v. Roemer*, 500 U.S. 646 (1991), a federal district court in Louisiana permitted state judicial elections to go forward and allowed the winners of the elections to take office, even though the Attorney General had interposed valid objections to the election process for the judgeships. The Supreme Court, reversing the district court, held that " § 5's prohibition against implementation of unprecleared changes required the District Court to enjoin the election." *Clark*, 500 U.S. at 654.

In the present case, the Attorney General has likewise interposed an objection, refusing to preclear the City's inclusion in Ward 1 of the areas annexed in the Weatherly subdivision. Any remedy authorizing a recount to include votes from these unprecleared areas would necessarily contravene the Attorney General's objection. Therefore, ordering this remedy would effectively overturn the Attorney General's preclearance adjudication, something that § 5 allows only federal courts to do.

The second remedy the plaintiffs requested, which involves nullifying the Ward 1 election and delaying a second vote until the City has obtained preclearance, likewise directly involve the application of § 5. In *Allen v. State Board of Elections*, 393 U.S. 544 (1969), Chief Justice Warren, writing for the Court, observed:

> "The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race. . . . [T]he Act gives a broad interpretation to the right to vote, recognizing that voting includes 'all action necessary to make a vote effective.' 79 Stat. 445, 42 U.S.C. § 1973l(c)(1) (1964 ed., Supp. I). See *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). . . .
>
> "The legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way."

Allen, 393 U.S. at 565-66 (footnote omitted).

The Supreme Court later addressed the postponement of elections in *NAACP v. Hampton County Election Commission*, 470 U.S. 166 (1985). In that case, several residents of Hampton County, South Carolina, and the NAACP, a civil rights organization, sued the Hampton County election commission and several other related defendants, seeking to enjoin a school-board election as illegal under § 5. The plaintiffs alleged that several election procedures had been changed, but had not been precleared, including the scheduled date of the school-board election.

Ironically, the election commission's decision to change the date of the school-board elections was the result of an attempt by the commission to comply with § 5. The commission changed the date of the school-board elections after the Attorney General had precleared a previously-submitted election plan. The preclearance of that plan by the Attorney General had the effect of nullifying an election previously held under the prior election rules. Therefore, in an effort to implement the new precleared plan, the commission scheduled a second election to occur on a special date. The federal three-judge panel held that, although implementation of the new election plan was a change under § 5, "the scheduling of the election and the filing period were simply 'ministerial acts necessary to accomplish the statute's purpose . . . , and thus did not require preclearance.' " *Hampton County*, 470 U.S. at 174. On appeal, the Supreme Court reasoned that its inquiry in § 5 cases was not whether the implemented election-procedure changes were actually discriminatory, but "whether the challenged alteration has the *potential* for discrimination." *Id.* at 181. Justice White, writing for the Court, concluded that changing the date of an

election had such potential, and the Supreme Court reversed the lower court. The Court held that changes regarding the date of an election — even when those changes affect only a single election cycle — require preclearance. *Id.*

In the present case, we are unable to afford the plaintiffs the relief they request without doing violence to § 5. The United States Supreme Court has made it clear that state courts, when considering a remedy altering an election process, must defer to the preclearance mandate of § 5. Specifically, the Court has said, "When a party to a state proceeding asserts that § 5 renders the contemplated relief unenforceable, therefore, the state court must examine the claim and refrain from ordering relief that would violate federal law." *Hathorn v. Lovorn*, 457 U.S. 255, 269-70 (1982). We are therefore confronted with a situation where we must make a § 5 preclearance adjudication before granting the plaintiffs their requested relief, or, indeed, any other relief with respect to the City's election procedures, something that § 5 clearly precludes our doing. For the same reason that state courts are powerless to grant relief to the plaintiffs, state courts are without jurisdiction to entertain the merits of the plaintiffs' claim, because a full adjudication — which, of course, includes the possibility of granting relief — requires consideration of a substantial question of law under § 5.

Appendix A

Conclusion

For the foregoing reasons, we affirm the Shelby Circuit Court's judgment of dismissal for lack of jurisdiction.

AFFIRMED.

See, Johnstone, Woodall, and Stuart, JJ., concur.
Lyons and Harwood, JJ., concur specially.
Moore, C.J., and Houston, J., dissent.

Appendix A

LYONS, Justice (concurring specially).

Under § 5 of the Voting Rights Act of 1965 (42 U.S.C. § 1973c), a few states, including Alabama, are prevented from enforcing changes affecting voting practices without first obtaining approval from the Federal government. I believe that Justice Black was right when he dissented from the United States Supreme Court's upholding the validity of § 5 against constitutional attack in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). Justice Black, in his dissent, made the following observations:

> "My second and more basic objection to § 5 is that Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. . . . Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. . . . Moreover, it seems to me that § 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that 'The United States shall guarantee to every State in this Union a Republican Form of Government.' I cannot help but believe that the inevitable effect of any such law which forces any one of the States

to entreat federal authorities in far-away places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces. . . . A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

"I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly rejected. The refusal to give Congress this extraordinary power to veto state laws was based on the belief that if such power resided in Congress the States would be helpless to function as effective governments. Since that time neither the Fifteenth Amendment nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state

> laws either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress — denied a power in itself to veto a state law — can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases — they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval."

Id. at 358-61 (footnote omitted).

As the majority points out, the United States Supreme Court has interpreted § 5's proscription against changes in state law without advance federal approval to bar a state court from ordering relief that would otherwise require preclearance if such action were taken by any other branch of state government. *Hathorn v. Lovorn*, 457 U.S. 255, 269-70 (1982). Under *Hathorn*, the approved practice requires submission of the claim for relief to the Attorney General before application is made to the court. The Court observed:

> "Our holding does not prevent state courts from attempting to accommodate both state and federal interests. *A state court, for example, might adopt the approach followed by the Chancery Court in this case, and order the parties to submit the proposed relief to the Attorney General.* If the Attorney General registers an objection, the court might then order the parties to seek a declaratory judgment from the District Court for the District of Columbia."

Id. at 270 n.24 (emphasis added).

On the record before us, there is no indication that the request for a court-ordered stay of the election has received federal approval pursuant to § 5.

While I share the angst expressed in Justice Houston's dissenting opinion, criticism of the result in this case should, I respectfully submit, be directed to Congress.

HARWOOD, J., concurs.

HOUSTON, Justice (dissenting).

I would grant the second remedy requested by the plaintiffs and nullify the Ward 1 election and delay a second election to fill the Ward 1 council seat until the City has obtained preclearance from the Civil Rights Division of the Justice Department. The very idea that this Court by its opinion deprives 101 registered voters, who voted, of their right to vote to keep from doing violence to § 5 of the Voting Rights Act of 1965, offends my sense of truth, justice, and the American way.

APPENDIX B — ORDER OF THE ALABAMA CIRCUIT COURT OF SHELBY COUNTY, EIGHTEENTH JUDICIAL CIRCUIT DATED AND FILED SEPTEMBER 22, 2000

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA EIGHTEENTH JUDICIAL CIRCUIT

CASE NO. CV-00-850

Brenda O. Singer, Patsy H. Cannon, Gwen Dill, and John D. Harmon

Plaintiffs,

v.

City of Alabaster, an Alabama municipal corporation; Steve Rauch, in his official capacity as Mayor of the City of Alabaster; and, Bobby Lee Harris

Defendants.

ORDER

The cause is presently before the Court on the plaintiffs' complaint to contest the municipal election in the City of Alabaster held August 22, 2000. The allegation of the complaint is that the plaintiffs were denied the right to vote in the Ward 1 City Council election, disenfranchising them in violation of their Constitutional and statutory rights. The plaintiffs seek to nullify the election of Bobby Lee Harris as Councilman for Ward 1 of the City of Alabaster.

Appendix B

Also pending before the Court is a motion to dismiss this cause filed on behalf of Bobby Lee Harris, the City of Alabaster, and Steve Rauch in his official capacity as Mayor of Alabaster; hereinafter collectively referred to as defendants. The Court has also allowed the Attorney General of the United States, hereinafter referred to as the Attorney General, to participate in these proceedings as amicus curiae.

It is undisputed among the parties and participants that the election at issue is subject to the jurisdiction of § 5 of the Voting Rights Act of 1965. See *Perkins v. Matthews*, 540 U.S. 379 (1971). Specifically, no new voting practice is enforceable unless preclearance is obtained from the United States Attorney General or the United States District Court for the District of Columbia. 42 U.S.C. § 1973c. "Congress designed the preclearance procedure 'to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process' " *Lopez v. Monterey County, California*, 519 U.S. 9 (1996). "Congress chose to accomplish this purpose by giving *exclusive authority* to pass on the discriminatory effect or purpose of an election change to the Attorney General and to the District Court for the District of Columbia." *Id.* (Emphasis added). See also *McDaniel v. Sanchez*, 452 U.S. 130 (1981). By obtaining judicial preclearance, a covered jurisdiction, like the City of Alabaster, may obtain from the United States District Court for the District of Columbia, a declaratory judgment that the voting change would not have the purpose or effect of denying or abridging the right to vote on account or race or color. *Clark v. Roemer*, 500 U.S. 646 (1991).

Appendix B

In the instant case, the City of Alabaster sought preclearance from the Attorney General concerning the annexation of several tracts of land located in the Weatherly subdivision in the City of Alabaster. In addition to seeking approval of the annexation for mayoral purposes, the City also sought preclearance to place the annexed tracts in Ward 1 for purposes of City council representation. The City obtained preclearance for mayoral purposes; however, the Attorney General specifically refused to grant preclearance for the placement of the Weatherly tract Ward 1. Specifically, the Attorney General determined that the City failed to carry "its burden of showing that the designation of Ward 1 has neither a discriminatory purpose nor a discriminatory effect." (August 16, 2000 letter from the U.S. Department of Justice to the City Attorney). The Attorney General further determined that the residents of the annexed portions of the Weatherly subdivision could vote in the mayoral race but, **could not** vote in the Ward 1 City Council race. *Id.*

The relief sought by the plaintiffs in this cause, specifically to nullify the election of the City Councilman for Ward 1, to conduct a re-count of the votes cast in the Ward 1 City Council election and to grant a preliminary injunction to enjoin the filing of the office of Ward 1 Councilman would only be available through disregarding the clearly established federal law. A state court must not order relief that violates federal law. *Hathorn v. Lovorn*, 457 U.S. 255 (1982). The Alabama Supreme Court has held that "cases involving the interpretation of the preclearance requirements of Section 5 of the [F]ederal Voting Rights Act are within the exclusive jurisdiction of the federal courts." *Mitchell v. City of Prichard*, 538 So. 2d 1 (Ala. 1988). While

the Court is not unsympathetic to the plight of the plaintiffs in that they were unable to cast legal votes in the race for Ward 1 City Council representative[1] for the reasons set out previously in this Order, it is without authority to rule otherwise.

Accordingly, the plaintiffs' request for preliminary injunctive relief, as well as any and all other relief sought is hereby **DENIED**. Further, the defendants' motion to dismiss is due to be, and is hereby **GRANTED**.

DONE AND ORDERED on this the 22nd day of September, 2000.

s/ D. Al Crowson
D. Al Crowson
Circuit Judge

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1. which Mr. Edward Still, counsel for Defendant, Bobby Harris concedes" . . . (for the purposes of the Motion to Dismiss and Motion for Preliminary Injunction) that all ninety-three (93) votes from the newly-annexed Weatherly residents were cast for Mr. Goode." See letter from Edward Still dated September 21, 2000. Mr. Goode was Bobby Harris' opponent.

APPENDIX C — COMPLAINT AND STATEMENT TO CONTEST MUNICIPAL ELECTION DATED AUGUST 28, 2000

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

Civil Action No.

BRENDA O. SINGER, PATSY H. CANNON, GWEN DILL, and JOHN D. HARMON,

Plaintiffs,

vs.

CITY OF ALABASTER, an Alabama Municipal Corporation; STEVE RAUCH, in his official capacity as Mayor of the City of Alabaster; and BOBBY LEE HARRIS,

Defendants.

COMPLAINT AND STATEMENT TO CONTEST MUNICIPAL ELECTION

PREAMBLE

This is an action under Alabama Code § 11-49-69 to contest the purported election of Mr. Bobby Lee Harris to the office of Councilman for Ward 1 of the City of Alabaster.

Appendix C

PARTIES

1. Plaintiffs Brenda O. Singer, Patsy H. Cannon, Gwen Dill, and John D. Harmon are resident citizens of the City of Alabaster, located in Shelby County, Alabama. Plaintiffs live in a subdivision known as Weatherly which is located in Shelby County. Plaintiffs are qualified voters in Shelby County, and were so on the date of contested election, August 22, 2000.

2. Defendant City of Alabaster is an Alabama municipality situated in Shelby County, Alabama.

3. Defendant Steve Rauch is sued in his official capacity and is Mayor of the City of Alabaster.

4. Defendant Bobby Lee Harris is sued in his official capacity as Ward 1 Councilman and individually. Plaintiffs contest the purported election of Mr. Harris to the office of Councilman for Ward 1 of the City of Alabaster.

FACTS

5. During the years 1994-1996, the City of Alabaster annexed several tracts of land located in the Weatherly subdivision in Shelby County. Plaintiffs are currently residents of the subject tracts which were annexed by the City of Alabaster, believed to be identified in Alabaster City Ordinances No. 94-338 and No. 96-410, and are thereby considered duly qualified electors of the City of Alabaster.

6. The City of Alabaster placed the lands which are the subject of the Weatherly annexation in Ward 1 of the City of Alabaster, for purposes of council representation.

7. On August 21, 2000 the City Council of Alabaster met in secret session, in violation of the Alabama Open Meetings Act, and agreed not to allow the votes cast in the Weatherly subdivision to be counted in the Ward One Council race or any other Council election to be held the following day.

8. On or about August 22, 2000, the City of Alabaster held a regularly scheduled election for the offices of Mayor and members of the City Council of Alabaster. The residents of the Weatherly annexed tracts were permitted to vote for the office of Mayor, but subsequently had their votes disallowed for the office of Ward 1 council member. Nor were their votes counted for any other city council member election. Ninety-three persons from the contested annexation area voted together with six absentee voters. Upon information and belief, all ninety-three persons voted for candidate Todd Goode.

9. The unofficial results, without counting the disputed ballots, indicate that defendant Bobby Lee Harris received the greatest number of counted votes in the election. If the uncounted ninety-three ballots are included in the final voting results, Mr. Harris' opponent, Todd Goode, would be the elected council member.

10. Plaintiffs further submit the annexed Affidavits of Patsy H. Cannon, Gwen Dill, John D. Harmon, and Brenda

O'Shaugnessy Singer in support of their contest of this election. Sufficient security is also submitted herewith.

GROUNDS OF CONTEST

11. The City of Alabaster and its Mayor, acting under color of law, have denied to the plaintiffs the right to vote in the Ward 1 city council election, disenfranchising them entirely from the municipal city council election. As a direct result of said denial of the right to vote, the candidate for which the plaintiffs cast their ballot has not been elected.

12. Defendants' actions constitute a denial of plaintiffs' right to vote and a denial of equal protection of laws guaranteed by the Constitution of the State of Alabama and the Fourteenth Amendment to the Constitution of the United States and enforceable pursuant to 42 U.S.C., § 1983.

13. Defendants' actions constitute a violation of plaintiffs' rights pursuant to § 2 of the federal Voting Rights Act of 1965.

14. Plaintiff's contest is grounded statutorily upon Code of Alabama, 1975, § 11-49-69(a) (1) "Misconduct . . . on the part of any elected official, any marker, the municipal governing body or any other person" and (4) "The rejection of legal votes;"

PLEA FOR RELIEF

15. Plaintiffs petition this Court to nullify, and set aside the results of the election for Council member, Ward One, of the City of Alabaster, held on August 22, 2000.

Appendix C

16. Plaintiffs petition the Court for a writ of mandamus directing the Mayor or Clerk of the City of Alabaster (or other appropriate city official) to conduct a re-count of the votes cast in the Ward One election to the Alabaster City Council, with specific instructions to count all votes cast from the Weatherly sub-division in such re-count, and to certify the results from such re-count as official and final.

17. Plaintiffs petition the Court for a Preliminary and Permanent Injunction, pursuant to Rule 65 (a), Alabama Rules of Civil Procedure, enjoining the City of Alabaster, Alabama from filling the office of Ward One of the City Council, until this Court has full and ample opportunity to issue a ruling on the merits of this contest.

18. Plaintiffs petition the Court for an award of attorneys fees and costs as the Court finds appropriate.

RAYMOND P. FITZPATRICK, JR. (FIT001)

R. SCOTT CLARK (CLA061)

GARY L. BROWN (BRO186)

Attorneys for Plaintiffs/Contestants

Appendix C

Of Counsel
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Farley Building, Suite 600
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(205) 320-2255

VERFICATION

The undersigned plaintiffs-contestants, being duly sworn, swear that the facts in the foregoing complaint are true and correct.

_____
Brenda O. Singer

_____
Patsy H. Cannon

_____
Gwen Dill

Sworn to and subscribed before me this 28th day of August, 2000.

_____
Notary Public
My Commission expires:_____

APPENDIX D — CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment Fourteen, Section 1 of the Constitution of the United States

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment Fifteen of the Constitution of the United States

Section. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation.

Section 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence

of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard,

practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.